

AMENDED IN ASSEMBLY APRIL 20, 2005

AMENDED IN ASSEMBLY MARCH 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 173**

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**Introduced by Assembly Member Houston**

January 20, 2005

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An act to add Section 1714.4 to the Civil Code, relating to liability.

### LEGISLATIVE COUNSEL'S DIGEST

AB 173, as amended, Houston. Liability: immunity: food and beverages.

Under existing law, everyone is generally responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.

Existing law provides immunity from liability for certain actions and for certain products.

This bill would provide immunity from civil liability to a manufacturer, packer, distributor, carrier, holder, marketer, advertiser, or seller of a food or beverage, as defined, or an association of one or more of these entities, for any claim arising from weight gain, obesity, or a health condition associated with weight gain or obesity from the long-term consumption of the food *that results in weight gain or obesity*. The bill would except from this immunity a case in which the claim of injury is based on a material violation of a state or federal composition, branding, or labeling standard, and that violation caused the injury claimed, as specified.

The bill would apply to all claims ~~pending~~ *filed* on the effective date of the act and subsequent claims.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. The Legislature finds and declares the~~  
2     ~~following:~~

3     ~~(a) Individuals remain ultimately responsible for the choices~~  
4     ~~they make regarding their bodies, despite any commercial~~  
5     ~~influences.~~

6     ~~(b) Excessive litigation restricts the ranges of choices that~~  
7     ~~would otherwise be available to individuals who consume~~  
8     ~~products responsibly.~~

9     ~~SEC. 2.~~

10    ~~SECTION 1.~~ Section 1714.4 is added to the Civil Code, to  
11    read:

12    1714.4. (a) For purposes of this section:

13    (1) “Claim” means any claim by, or on behalf of, a natural  
14    person, and any claim derived or arising from it, that is asserted  
15    by any other person.

16    (2) “Food” means any article that meets the definition of food  
17    in Section 201(f) of the Federal Food, Drug, and Cosmetic Act  
18    (21 U.S.C. 321(f)).

19    (3) “Generally known condition allegedly caused by, or  
20    allegedly likely to result from, the long-term consumption of  
21    food” means a condition generally known to result or likely to  
22    result from, the cumulative effect of consumption and not from a  
23    single instance of consumption.

24    (4) “Other person” means any individual, corporation,  
25    company, association, firm, partnership, society, joint-stock  
26    company, governmental entity, or any other entity, including a  
27    private attorney general.

28    (b) Except as provided in subdivision (c), a manufacturer,  
29    packer, distributor, carrier, holder, marketer, advertiser, or seller  
30    of a food, or an association of one or more of these entities, shall  
31    not be subject to civil liability for any claim arising out of weight  
32    gain, obesity, a health condition associated with weight gain or  
33    obesity, or other generally known condition allegedly caused by,

1 or allegedly likely to result from, the long-term consumption of  
2 the food *that results in weight gain or obesity*.

3 (c) The immunity provided by subdivision (b) shall not  
4 preclude civil liability if the claim includes as an element a  
5 material violation of a composition, branding, or labeling  
6 standard prescribed by state or federal law, and the injury  
7 claimed was actually and proximately caused by the violation.  
8 Nothing in this subdivision shall be construed to create new, or  
9 expand existing, private rights, if any, under the adulteration or  
10 misbranding statutes or regulations, and this subdivision shall not  
11 be construed to interfere with any agency's exclusive or primary  
12 jurisdiction to find or declare violations of those statutes or  
13 regulations.

14 (d) In any action to which the exemption set forth in  
15 subdivision (c) applies, the complaint initiating the action shall  
16 state with particularity all of the following:

17 (1) The standard, statute, regulation, or other state or federal  
18 law that was allegedly violated.

19 (2) The facts that are alleged to constitute a material violation  
20 of the standard, statute or regulation.

21 (3) The facts alleged to demonstrate that the violation actually  
22 and proximately caused actual injury to the plaintiff.

23 (e) In any action to which the exemption set forth in  
24 subdivision (c) applies, all discovery and other proceedings shall  
25 be stayed during the pendency of any motion to dismiss unless  
26 the court finds upon the motion of any party that particularized  
27 discovery is necessary to preserve evidence or to prevent undue  
28 prejudice to that party. During the pendency of any stay of  
29 discovery pursuant to this paragraph, unless otherwise ordered by  
30 the court, any party to the action with actual notice of the  
31 allegations contained in the complaint shall treat all documents,  
32 data compilations ~~(including, including~~ electronically recorded or  
33 stored ~~data~~ data, and tangible objects that are in the custody or  
34 control of the party and that are relevant to the allegations, as if  
35 they were the subject of a continuing request for production of  
36 documents from an opposing party under the Code of Civil  
37 Procedure.

1 SEC. 3. The provisions of this act shall apply to all covered  
2 claims ~~pending~~ *filed* on the effective date of the act and all claims  
3 filed thereafter, regardless of when the claim arose.

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